

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST)	
FOR REVIEW BY:)	CHARGE NO.: 2008CA3555
)	EEOC NO.: 21BA82250
GARY PIGONI,)	ALS NO.: 10-0315
Petitioner.)	

ORDER

This matter coming before the Commission by a panel of three, Commissioners David Chang, Marylee V. Freeman, and Charles E. Box, presiding, upon Gary Pigoni's ("Petitioner") Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2008CA3555; and the Commission having reviewed all pleadings filed in accordance with 56 Ill. Admin. Code, Ch. XI, Subpt. D, § 5300.400, and the Commission being fully advised upon the premises;

NOW, **WHEREFORE**, it is Hereby **ORDERED** that:

- (A) *The Respondent's dismissal of Count A of the Petitioner's charge is **VACATED**, and Count A of the charge is **REINSTATED** and **REMANDED** to the Respondent for entry of a finding of **SUBSTANTIAL EVIDENCE** as to Count A and for further proceedings consistent with this Order and the Act; and,*
- (B) *The Respondent's dismissal of Count B of the Petitioner's charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.*

In support of which determination the Commission states the following:

1. The Petitioner filed a charge of discrimination with the Respondent on June 23, 2008. The Petitioner alleged his former employer, Triangle Package Machinery Co. ("Employer"), discharged him because of his age, 54 (Count A), and his disability, Attention Deficit Hyperactivity Disorder (Count B), in violation of Section 2-102(A) of the Illinois Human Rights Act (the "Act"). On March 22, 2010, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On April 26, 2010, the Petitioner filed this timely Request.

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge who is requesting review of the Department's action shall be referred to as the "Petitioner."

2. The Petitioner was employed as an engineer. The Petitioner had worked for the Employer since February 1999. In December 2002, the Petitioner was laid off. The Employer rehired the Petitioner in August 2003. The Petitioner worked on the Employer's cartoner production line. The Petitioner alleged he also had some experience in the Employer's "Scales and Baggers" product line.
3. The Petitioner trained an engineer under the age of 40 who also worked in the Employer's cartoner product line.
4. In January 2008, the Employer discharged the Petitioner. The Employer stated it discharged the Petitioner because cartoner sales were down, the Employer was going to discontinue its cartoner product line, and the Petitioner's services were no longer needed since the Petitioner had been hired specifically to work on its cartoner product line.
5. Also in January 2008, the Employer transferred the younger engineer who had been trained by the Petitioner to its Scales and Baggers product line.
6. In his charge, the Petitioner alleged the Employer discharged him on January 14, 2008, because of his age and disability.
7. In his Request, the Petitioner disputes the Employer's contention that he had been hired solely as a cartoner engineer. The Petitioner argues that he had experience in the Employer's Scales and Baggers line, and that the Employer could have transferred him to the Scales and Baggers line. The Petitioner argues that the Employer instead replaced him with the younger, non-disabled, less experienced employee whom the Complainant had trained.
8. In its Response, the Respondent argues that the dismissal of the charge should be sustained because there was no substantial evidence of either age or disability discrimination.

Conclusion

Count A: Unlawful Discharge from Employment Due to Age

The Commission finds there is substantial evidence of age discrimination as alleged in Count A. Substantial evidence exists when the evidence is such that a reasonable mind would find the evidence sufficient to support a conclusion. See In re Request for Review of John L. Schroeder, IHRC, Charge No. 1993CA2747, 1995 WL 793258, *2 (March 7, 1995). The Commission finds there is substantial evidence that the Employer's articulated reason for discharging the Petitioner was a pretext for unlawful employment discrimination on the basis of age.

Although the Employer contends the Petitioner was hired solely for his cartoner product line skills, the Petitioner alleged he was an experienced engineer who was also familiar with the Employer's Scales and Baggers line. When the Employer decided to discontinue its cartoner product line, there is evidence that the Employer could have transferred the Petitioner to a different department. Rather, the Employer chose to discharge the Petitioner, and retain the Petitioner's younger, less experienced comparable.

In light of the evidence that the Employer could have transferred the Petitioner to a different department rather than discharge him, the Commission finds there is substantial evidence that the Employer's articulated non-discriminatory reason for firing the Petitioner was a pretext for age discrimination. There is substantial evidence the Petitioner's age was a motivating factor in the Employer's decision to discharge the Petitioner and retain his younger, less experienced comparable.

Therefore, the Commission herein vacates the Respondent's dismissal of Count A of the Petitioner's charge and remands Count A of the charge to the Respondent for entry of a finding of substantial evidence and further action as herein stated.

Count B: Unlawful Discharge from Employment Due to Petitioner's Disability

The Commission concludes the Respondent's dismissal of Count B of the Petitioner's charge shall be sustained for lack of substantial evidence.

The Commission finds that no evidence has been presented which demonstrates a nexus between the Petitioner's disability and his discharge. Mere speculation is not substantial evidence of discrimination. See Willis v. IDHR , 307 Ill.App.3d 317, 718 N.E.2d 240 (4th Dist. 1999) .

Therefore, the Petitioner's Request as to Count B is not persuasive, and the dismissal of Count B is sustained.

WHEREFORE, IT IS HEREBY ORDERED THAT:

- (A) The Respondent's dismissal of Count A of the Petitioner's charge is **VACATED**, and Count A of the charge is **REINSTATED** and **REMANDED** to the Respondent for entry of a finding of **SUBSTANTIAL EVIDENCE** as to Count A and for further proceedings consistent with this Order and the Act; and,
- (B) The Respondent's dismissal of Count B of the Petitioner's charge is **SUSTAINED** for **LACK OF SUBSTANTIAL EVIDENCE**.

This Order is not yet final and appealable.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 9th day of March 2011.

Commissioner David Chang

Commissioner Marylee V. Freeman

Commissioner Charles E. Box